THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

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WRIT PETITION NO :19622 of 2005

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Dated: 20.09.2005

Between:

1. The Government of India rep., by

its secretary, Ministry of Finance,

Department of Revenue, Central

Board of Excise & Customs, New Delhi and another

.. **Petitioners**

And

Nallpaneni Rama Mohan Rao,

S/o Ramachandrudu. **.. Respondent**

THE HON'BLE MRS JUSTICE T.MEENA KUMARI

&

THE HON'BLE MR JUSTICE P.LAKSHMANA REDDY

WRIT PETITION NO :19622 of 2005

ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

This writ petition is filed seeking a direction, in the nature of writ of certiorari, to set aside the Order dated 15.02.2005 in O.A.No.123 of 2004 on the file of the Administrative Tribunal, Hyderabad.

The petitioners herein are the respondents and the respondent herein is the applicant in the O.A. The status of the parties will be referred to herein as arrayed in the O.A.

The facts in the O.A. are that the applicant while working as Chemical Examiner Grade II in the Central Excise Laboratory, Visakhapatnam was appointed to hold the additional charge of Customs House Laboratory, Visakhapatnam. He discharged the additional duties for a period of 4 years 12 days, but he was not paid any additional charge allowance in spite of his representation. Hence, he filed O.A.No.878 of 2002 wherein the Tribunal directed the respondents to consider the claim of the applicant and pass appropriate order and if the applicant is found eligible, to pay additional allowance within three months from the date of the order. Pursuant to the orders of the Tribunal, the respondents passed order dated 23.10.2003 rejecting the claim of the applicant. Aggrieved by the same, the applicant has approached the tribunal by way of filing the present O.A. The Tribunal having gone into the merits of the case allowed the O.A. and directed the respondents to grant the additional allowance under Rule 49 (iii) of the Fundamental Rules within a period of three months from the date of communication of the order, failing which, the respondents shall pay interest at the rate of 12% p.a. on the amount till the date of actual payment. Aggrieved by the same, the respondents filed the present writ petition.

Heard the learned counsel.

The learned Assistant Solicitor General contends that the case of the applicant is not covered by FR 49(iii) as he held additional charge to look after the post, which is equal to his cadre and if he was in charge of the post, which is not equivalent to his regular post, then only, his case would be considered under FR 49 (iii), but in the instant case, his case falls under the purview of FR 49 (v) and therefore, the order of the Tribunal is liable to be set aside.

On the other hand, the learned Counsel for the applicant contends that the applicant was directed to discharge the additional duties in another post and his case falls under FR 49 (iii) and therefore, the tribunal is justified in allowing his claim.

Perused the material available on record.

Admittedly, the applicant was directed to hold additional charge of Central Excise Laboratory, Visakhapatnam. The regular post of the applicant is Chemical examiner Grade-II. The main contention of the respondents is that the post held by the applicant as additional charge is equal cadre to the regular post of the applicant and therefore, his case falls under FR 49 (v). In order to decide the issue involved in this writ petition, it has to be examined as to whether there is any such material placed before this Court to show that the cadre of the additional charge post and the regular post held by the applicant, is one and the same and if not, whether his case falls under the purview of FR 49 (iii) of the Rules.

A perusal of the material available on record and the order impugned, goes to show that no such material has been adduced either before the tribunal or before this Court to show the distinction as to the cadre between the in charge post as well as the regular post held by the applicant.

Therefore, in the present facts and circumstances of the case and in the absence of any such material as to the distinction between the in charge post and the regular post, there is no other go except to hold that except stating that the case of the applicant falls within the ambit of the provisions of section 49 (v) and thereby, he is not entitled to the relief in question, the respondents have not evinced any interest to adduce the material to that effect. Therefore, we feel that the tribunal is justified in allowing the claim of the applicant and the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed at the admission stage itself. No order as to costs.

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Justice T. Meena Kumari

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Justice P. Lakshmana Reddy

Dated: 20.09.2005

Nn.